

Before the  
Federal Communications Commission  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
QUALCOMM Incorporated	)	DA 00-219
	)	
Petition for Declaratory Ruling	)	
Giving Effect to the Mandate of	)	
The District of Columbia Circuit	)	
Court of Appeals	)	
	)	
Service Rules for the 746-764 and	)	
776-794 MHz Bands and Revisions	)	WT Docket No. 99-168
to Part 27 of the Commission's Rules	)	

**REPLY OF QUALCOMM INCORPORATED**

QUALCOMM Incorporated ("QUALCOMM"), by its attorneys, hereby replies to the comments and oppositions filed in the above-captioned proceeding.

**I. INTRODUCTION**

On January 28, 2000, QUALCOMM filed a Petition for Declaratory Ruling ("Petition") asking that the Federal Communications Commission ("FCC" or "Commission") give effect to the mandate of the District of Columbia Circuit Court of Appeals in *QUALCOMM v. FCC*, by declaring Block D in Economic Area Grouping 3 ("EAG 3") to be suitable spectrum for award to QUALCOMM<sup>1</sup>. Seven parties have filed pleadings in opposition to QUALCOMM's Petition: US West Wireless, LLC ("US West"), SBC Wireless, Inc. ("SBC"), PSINet Inc. ("PSINet"), GTE Service Corporation

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<sup>1</sup> *QUALCOMM Incorporated v. Federal Communications Commission*, 181 F.3d 1370 (D.C. Cir. 1999) ("*QUALCOMM* case"). This decision was preceded by *Freeman Engineering Associates v. FCC*, 103 F.3d 169 (D.C. Cir. 1997) ("*Freeman*") in which the Court concluded that the FCC had unfairly denied QUALCOMM a pioneer's preference by treating it inconsistently with a pioneer's preference winner. In the *Freeman* case the court ordered the FCC to "remedy this inconsistency." The *QUALCOMM* court found that the only remedy was award of a license and ordered the FCC to do so.

("GTE"), Rig Telephones Inc. d/b/a Datacom ("Datacom"), BellSouth Corporation ("BellSouth"), and AT&T Corp. ("AT&T").<sup>2</sup>

In general, the comments raise issues concerning: the Commission's authority to award a license to QUALCOMM without competitive bidding for that license, the size and value of the proposed award, the impact of the award on the forthcoming auction, including the possibility of a nationwide Block D license, and the availability of alternatives.

Importantly, none of the commenters deny that the Commission has an obligation to award a license "forthwith", as required by Section 402(h) of the Communications Act.<sup>3</sup> Nor do any of the commenters deny that the Commission has not satisfied that obligation.

It is indisputable that QUALCOMM was unfairly denied a pioneer's preference in 1993. After almost seven years, and two decisions by the D.C. Circuit, the Commission has still not corrected its error. One commenter suggests that even in an egregious case like this, the Court would not require an equitable solution.<sup>4</sup> QUALCOMM strongly disagrees, and is willing to continue litigating this matter until the FCC satisfies its obligation "to take prompt action to identify suitable spectrum and award QUALCOMM the license for it."<sup>5</sup>

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<sup>2</sup> QUALCOMM would like to express its appreciation to those two commenters, GTE and PSINet, who either filed electronically or who served QUALCOMM by hand on February 18, 2000. Their graciousness, particularly in light of the short reply period and federal holiday, stands in sharp contrast to the other commenters who mailed their comments. Those comments were received in the mail by QUALCOMM's counsel on Wednesday February 23, allowing only two days for QUALCOMM to reply.

<sup>3</sup> 47 U.S.C. § 402(h).

<sup>4</sup> Datacom Comments, February 18, 2000, p. 4.

<sup>5</sup> *QUALCOMM* case, p. 1381.

## II. ARGUMENT

### A. The Commission Is Not Precluded From Awarding a License to QUALCOMM by the Balanced Budget Act.

Several of the commenters argue that Congress has required that the Commission grant a license for 700 MHz spectrum only through competitive bidding.<sup>6</sup> Therefore, the award of a license to QUALCOMM, outside of the auction process, is precluded, at least insofar as the 700 MHz licenses are concerned.<sup>7</sup>

QUALCOMM disagrees. To the extent there is conflict between the competitive bidding requirement of the Balanced Budget Act and the Court's mandate to "award a license", the Court's mandate would prevail. In the *QUALCOMM* case, the very issue before the Court concerned whether the August 1997 Balanced Budget Act could be applied retroactively to extinguish QUALCOMM's rights under the mandate of the January 1997 *Freeman* case.<sup>8</sup> The Court decided it could not. In other words, when the *Freeman* Court ordered the Commission to "remedy" the inconsistent treatment of QUALCOMM, it ordered the award of a preference and a license. The *Freeman* mandate, confirmed by the *QUALCOMM* case mandate, "trumps" the subsequently enacted Balanced Budget Act. This result obtains because, as the Court ruled in the *QUALCOMM* case, under Section 402(h) of the Act, the court remains in control of its remand. Since QUALCOMM's original victory in *Freeman*, the FCC has been under a legal duty to carry out the Court's mandate that cannot be extinguished by subsequent legislation.<sup>9</sup>

The commenters would suggest that, even if this is true in the abstract, so long as there is a suitable alternative to 700 MHz spectrum for award to QUALCOMM, the Commission is required to follow the Congressional directive to award 700 MHz licenses

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<sup>6</sup> See, e.g., U.S. West Opposition, p. 7; Datacom Comments, pp. 2-3; GTE Opposition, pp. 5-6.; and BellSouth Opposition, pp. 2-3.

<sup>7</sup> U.S. West claimed: "*The Court's decision does not, by its terms, purport to trump the Commission's existing statutory obligations to auction spectrum in the 700 MHz band, and there is no need for this conflict to arise*": U.S. West Opposition, p. 7.

<sup>8</sup> *QUALCOMM* case, p. 1376.

<sup>9</sup> *QUALCOMM* case, p. 1378.

only through competitive bidding.<sup>10</sup> But there is no suitable alternative, consistent with the requirement of the Act that the Commission give effect to the mandate of the Court “forthwith”. No other spectrum, comparable to the Southern Florida MTA which QUALCOMM should have been awarded, will be available for award “promptly”.

Finally, QUALCOMM believes that award of the license according to the requirements of the pioneer’s preference provisions of Section 309(j) is not inconsistent with an award through “competitive bidding”. The purpose of competitive bidding is to set the price the winning bidder will pay. The price QUALCOMM will pay will be set by competitive bidding, pursuant to the “discount” formula provided for pioneers.

Support for this view is found in Section 309(j) of the Communications Act, which established the Commission’s authority to grant a license through a system of competitive bidding. There Congress, in a Section entitled “Rules of Construction”, made it clear that the Commission’s authority to use competitive bidding should not

Be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology.<sup>11</sup>

Thus, any construction of the FCC’s auction authority would have to include the possibility of an award of a pioneer’s preference, even in 700 MHz. This construction, of course, would be subject to the requirements of Section 309(j)(13) which require that pioneers make payment for their licenses.<sup>12</sup>

For these reasons, the Commission is not precluded by the Balanced Budget Act from granting QUALCOMM’s Petition.

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<sup>10</sup> “... [t]he Commission is not at liberty to award *some* of the spectrum at issue through competitive bidding and other parts through some other process, however worthy the cause”: Datacom Comments, p. 2 (emphasis in original.)

<sup>11</sup> 47 U.S.C. § 309(j)(6)(G).

<sup>12</sup> 47 U.S.C. § 309(j)(13)(B). We note that QUALCOMM intends to comply in every respect with statutory payment obligations, despite the implications raised in GTE’s Opposition.

**B. Block D of EAG 3 is Suitable Spectrum.**

Several of the commenters argue that the Block D license in EAG 3 is not comparable to the Southern Florida license of which QUALCOMM was unfairly deprived.<sup>13</sup> They claim that EAG 3 is much larger than the Southern Florida Major Trading Area (“MTA”).<sup>14</sup> Thus, award of this license would constitute a “windfall” for QUALCOMM.<sup>15</sup>

First, the Southern Florida MTA, while smaller in geography, was larger in spectrum: 30 MHz versus the 20 MHz allocated to Block D. EAG 3 represents an appropriate balance between geographic size and spectrum size.

Second, EAG 3 is presently used by 21 UHF television licensees, who are entitled to continue operations for several years. It will be necessary for QUALCOMM to accommodate these incumbents, which cover the metropolitan areas of EAG 3. Thus, as a practical matter, the award to QUALCOMM at the outset, and for several years thereafter, will be much less valuable than the 357,000 square mile, 44.5 million population, license cited by GTE.<sup>16</sup>

Some of the commenters argue that the value of the Miami license should not be considered in determining what the court meant when it used the terms “suitable,” “comparable,” and “commensurate.”<sup>17</sup> This argument is fundamentally flawed. The

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<sup>13</sup> SBC Opposition p. 1; GTE p. 4; U.S. West Opposition, p. 12; Datacom Comments, p. 4; and BellSouth Opposition, p. 5.

<sup>14</sup> While these commenters agree that EAG 3 is larger, whether based on population, geographical area or points of presence, they differ greatly in their estimations of the extent of the difference: “... EAG 3 covers a geographical area and population that is significantly larger than the Southern Florida MTA”: Datacom, p. 3. “The population of the Southeast EAG ... is six-fold greater than that of the Miami MTA”: U.S. West Opposition, p. 15. “Petitioner now seeks almost a tenfold increase in the population it would be authorized to serve ... a more than 900 percent increase...”: BellSouth, p. 6. “... EAG 3 is ... 26 times the size of the Miami MTA”: GTE Opposition, pp. 4-5.

<sup>15</sup> U.S. West Opposition, pp. 6 and 15; “... a much more valuable license than what it originally sought”: Datacom Comments, p. 2.

<sup>16</sup> GTE Opposition, p. 5. GTE also questions how QUALCOMM can deploy its system as early as 2001, given the existence of these incumbents. QUALCOMM’s request for 20 MHz allows it to “work around” some incumbents and to deploy HDR in non-metropolitan areas where necessary.

<sup>17</sup> See, e.g., U.S. West at 16, “Valuation ... is ... unrelated and irrelevant.”

value of spectrum is critical to this proceeding. Auctions are about value. The most important parameter in any spectrum auction is not the service area; it is not the band or the bandwidth; it is the value. QUALCOMM believes that any spectrum that it receives must be comparable to and commensurate in value with the license it would have been awarded had the Commission acted properly on its application in 1993. QUALCOMM is not seeking a windfall.<sup>18</sup> It is seeking spectrum that has a value comparable to the spectrum it should have received six years ago.

QUALCOMM retained PriceWaterhouseCoopers ("PWC") to estimate the present value of the Miami license. US West claims that, "A number of the assumptions in the PWC study indicate that it is of limited utility."<sup>19</sup> What is not clear is whether US West thinks the PWC valuation is too high or too low. QUALCOMM believes that valuation methodology was fair and, if anything, conservative. QUALCOMM acknowledges that estimating the present value of the license involves a number of factors. If US West is unwilling to acknowledge the validity of the PWC estimate, perhaps it would prefer to use either the Nextel or the NextWave estimates of the value of PCS spectrum.

Timothy M. Donahue, President and CEO of Nextel Communications Inc., recently told the Budget Committee of the United States Senate that his company was prepared to pay \$8.3 billion for the former NextWave licenses.<sup>20</sup> QUALCOMM assumes that this includes both NextWave's C Block licenses and its F Block licenses. This works out to an average of \$33/population. This is higher than the PWC estimate, even though it includes a large number of low population 10 MHz markets that have traditionally sold for much lower prices.

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<sup>18</sup> If there has been any windfall in this proceeding, it was received by the other three pioneers. APC received a 52% discount on the Washington, DC license; COX received a 49% discount on the Los Angeles license; and Omnipoint received a 22% discount on the New York license: *Broadband PCS Payment Order, 11 FCC Rcd 12384, 12386 (1996)*. All three have now sold their preferences properties for billions and are now free to participate in this auction with their profits while QUALCOMM still waits for its spectrum.

<sup>19</sup> U.S. West Opposition, p. 17.

<sup>20</sup> Statement of Timothy M. Donahue, President and CEO, Nextel Communications, Inc., before the Committee on the Budget, United States Senate, p. 9 (February 10, 2000).

At the same hearing at which Mr. Donahue made his statement, Raymond P. Dolan, Chief Operating Officer of NextWave told the Committee on the Budget that NextWave was offering to pay, “its entire \$4.3 billion commitment to the government in full ...”<sup>21</sup>. NextWave paid more than \$48/population for its C Block spectrum. This is 50% more than the PWC estimate.<sup>22</sup>

Finally, commenters disagree with QUALCOMM’s “first to the market” analogy, claiming that QUALCOMM could be “first to the market” with its new High Data Rate (“HDR”) technology, in *any* portion of the spectrum.<sup>23</sup> They argue QUALCOMM doesn’t need the 700 MHz spectrum to be first with HDR.

However, even if QUALCOMM were to deploy HDR in the PCS frequencies, it would still not achieve the advantage that the initial pioneers were intended to have.<sup>24</sup> It would not be able to use its license as a platform to showcase its technology. Deployment of HDR in the 2 GHz Band, where virtually all markets are committed to PCS voice service, is not comparable to deployment of HDR in the 700 MHz band, where markets are not yet committed to any service, much less any technology. The opportunity for showcasing its technology, an important characteristic of the Southern Florida MTA in 1993, simply does not exist in the PCS spectrum today. That opportunity would exist if QUALCOMM were to be awarded Block D of EAG 3.

For these reasons, Block D EAG 3 is “suitable spectrum”, comparable to the Southern Florida MTA of which QUALCOMM was unfairly deprived.

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<sup>21</sup> *Id.*, p. 1.

<sup>22</sup> Statement of Raymond P. Dolan, COO, NextWave Telecom, Inc., before the Committee on the Budget, United States Senate, p. 1 (February 10, 2000).

<sup>23</sup> *See, e.g.*, AT&T Comments, p. 3.

<sup>24</sup> *See, e.g.*, *Establishment of Procedures to Provide a Preference to Applicants Proposing An Allocation in New Services*, 5 FCC Recd 2766 (1990). *See also Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services*, 6 FCC Rcd 3488 (1991) (*Pioneer’s Preference Order*).

**C. Grant of the QUALCOMM Petition Will Not Have An Unacceptable Impact on the Upcoming Auction**

In their comments, PSINet, SBC, U.S. West and AT&T each make the argument that grant of the QUALCOMM Petition will unfairly and unnecessarily disrupt the upcoming auction of the 700 MHz spectrum.<sup>25</sup> Commenters claim that an award to QUALCOMM renders meaningless the Commission's stated goal of flexibility and makes a nationwide Block D license an impossibility.<sup>26</sup> It appears that several commenters may be hinting that grant of QUALCOMM's Petition would adversely affect the revenues to be derived from the auction because anyone willing to "pay any price" for a nationwide Block D license would not be able to do so.

First, with regard to the revenues to be derived from the auction, the Commission is precluded from making a determination of the public interest on an expectation of revenues to the federal government when assigning frequencies or issuing auction rules (including band plans).<sup>27</sup> Thus, to the extent that commenters specifically urge the Commission to deny the QUALCOMM Petition because of its impact on federal revenues, the Commission must dismiss those arguments. When commenters use "nationwide license" to mean "increased federal revenues", the Commission cannot take those arguments into consideration.

On the other hand, to the extent that "nationwide license" is used to mean "nationwide service", the QUALCOMM Petition is not inconsistent with the Commission's goals. An award to QUALCOMM does not at all preclude the possibility of a nationwide 700 MHz wireless system for high speed Internet access. QUALCOMM is willing to consider business arrangements with any party seeking to become a nationwide license holder, or with several parties seeking to be regional licensees. Furthermore, an award to QUALCOMM advances nationwide deployment because the HDR technology will be available and ready for deployment more quickly than any other

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<sup>25</sup> PSINet Comments, pp. 1 and 5; SBC Opposition, p. 2; U.S. West Opposition, pp. 6, 19; AT&T Comments, p. 1.

<sup>26</sup> GTE Opposition, p. 5; PSINet Opposition, pp. 1-2; BellSouth Opposition, p. 8.

<sup>27</sup> 47 U.S.C. § 309(j)(7).



technology of which we are aware. QUALCOMM is interested in establishing HDR as a nationwide competitive alternative to DSL and cable modems, so QUALCOMM will have incentives to enter into business arrangements.

Nevertheless, QUALCOMM is not suggesting that grant of its Petition will have no impact on the upcoming auction. Certainly it will. However, it is unrealistic to think that satisfying the Court's mandate will not have an impact on some auction, some time.<sup>28</sup> Those commenters who recommend that the Commission award QUALCOMM a recaptured C Block license<sup>29</sup> must recognize that such award will have an impact on the reauction of those licenses, should such reauction ever come to pass. It is highly likely that the Commission will auction *all* spectrum that might be considered comparable to the Southern Florida MTA. Disruption of an auction, then, cannot be a reason for failing to comply with the Court's mandate.

The commenters have argued that disruption of *this*, the 700 MHz, auction is somehow different because of the goals of flexibility, the possibility of aggregation, or, even, because QUALCOMM's Petition was "extraordinary"<sup>30</sup> and, presumably, a surprising development that might unhinge bidders' plans.

But many of the same arguments may apply in any future auction. The Commission cannot avoid complying with the Court's mandate because to do so would constrain its flexibility. It is axiomatic that following a higher authority constrains one's flexibility.

Indeed, given the Court's mandates in the *Freeman* and *QUALCOMM* cases, the Commission has been under a legal duty to consider whether the 700 MHz spectrum was suitable for a grant to QUALCOMM. The Commission failed to do so in adopting the 700 MHz band plan. That was a legal error in view of the fact that it was the FCC staff that first suggested the possibility that 700 MHz spectrum might be suitable for

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<sup>28</sup> As pointed out above, Congress recognized, in Section 309(j)(6)(G), that award to a pioneer might have an impact on competitive bidding.

<sup>29</sup> See, e.g., SBC Opposition, p. 3.

<sup>30</sup> PSINet Comments, p. 4.

QUALCOMM and in light of the Commission's failure, in seven months, to identify any other suitable spectrum. Thus it is in a sense not a question of compliance with the mandate affecting the auction; rather, it is the auction affecting compliance with the mandate.

As to the argument that QUALCOMM's Petition is somehow unfair because it was "surprising" and may affect bidders' plans, the QUALCOMM Petition was filed only three weeks after the release of the Commission's Order establishing the band plan and service rules for the 700 MHz spectrum.<sup>31</sup> And the Petition was served on all the commenters and most of the *ex parte* participants in that proceeding. Moreover, QUALCOMM itself filed an *ex parte* comment in that proceeding on December 21, 1999, before the adoption of the Service Rules, which specifically advocated the suitability of the 700 MHz spectrum for award to QUALCOMM to satisfy the Court's mandate.<sup>32</sup>

Therefore, to the extent the Petition was surprising, it is only because parties did not take notice when notice was given. Moreover, it is highly unlikely that a Petition filed only three weeks after adoption of service rules unhinged many settled plans for potential bidders.

For these reasons, QUALCOMM believes that there is no legally recognizable disruption to the auction that would be caused by grant of QUALCOMM's Petition, given the mandate of the Court in the *QUALCOMM* case.

#### **D. There Is No Other Suitable Spectrum Available**

Several commenters note that the Commission expects to auction reclaimed PCS licenses from bankrupt licensees.<sup>33</sup> They argue that that spectrum would be more suitable than the 700 MHz spectrum for award to QUALCOMM.<sup>34</sup> In particular, they note that

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<sup>31</sup> *Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, FCC 00-5, released January 7, 2000.

<sup>32</sup> Letter to Magalie R. Salas, Secretary, Federal Communications Commission, from Veronica M. Ahern, Counsel to QUALCOMM Incorporated, December 21, 1999.

<sup>33</sup> SBC Opposition, p. 3; BellSouth Opposition, pp. 8, 10.

<sup>34</sup> *Id.*

the Court of Appeals for the Second Circuit has given the Commission express authority to proceed with the steps necessary to reacquire C Block PCS spectrum licensed to NextWave.<sup>35</sup> The Commission has plans to auction these licenses in July 2000.<sup>36</sup> Commenters claim that one or more of these licenses would be more “suitable”<sup>37</sup> than the 700 MHz Block D license in EAG 3, particularly in view of QUALCOMM’s previous statements that it would accept the returned Phoenix C Block PCS license.<sup>38</sup>

First, with regard to the C Block Phoenix license, it should be noted that QUALCOMM first indicated its willingness “to consider a substitution of the Phoenix and other BTAs for the Miami MTA” on January 31, 1997, less than three weeks after the original *Freeman* decision.<sup>39</sup> On May 27, 1997, the Chairman of QUALCOMM wrote directly to the Chairman of the Commission asking to discuss whether Phoenix and other areas would be appropriate remedies.<sup>40</sup> During this entire period, while the Commission was under an obligation to remedy its inconsistent treatment of QUALCOMM, the Commission refused to consider QUALCOMM’s offer to discuss whether Phoenix would be acceptable.

Now three years have passed and what once may have been considered an adequate substitute is no longer. Bare PCS licenses are simply not as suitable as they may have been in 1997. The Court’s requirement that spectrum awarded to QUALCOMM be “commensurate with the spectrum it had requested in its application” means not merely a 30 MHz MTA, it means a 30 MHz MTA (or its equivalent) in a new service where a pioneer would be given a chance to showcase its technology. PCS

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<sup>35</sup> PSINet comments, p. 4 n6.

<sup>36</sup> BellSouth Opposition, p. 8, n20.

<sup>37</sup> BellSouth Opposition, p. 6.

<sup>38</sup> *See, e.g.*, U.S. West Opposition, p. 15.

<sup>39</sup> Letter to William F. Caton, Secretary, Federal Communications Commission, from Veronica M. Ahern, Counsel to QUALCOMM Incorporated, March 5, 1997. During the course of discussion, the Commission raised the issue of QUALCOMM’S eligibility to hold a C Block license. QUALCOMM is not eligible to hold a C Block license.

<sup>40</sup> Letter to Chairman Reed Hundt, Federal Communications Commission, from Dr. Irwin M. Jacobs, Chairman and CEO, QUALCOMM Incorporated, May 27, 1997.

licenses are, simply, no longer comparable to what QUALCOMM asked for in its original application.

Nor would grant of a PCS license be sufficient reward for QUALCOMM's pioneering technology. Datacom claims that QUALCOMM's Petition requires the Commission to grant some equitable relief, some form of compensatory damages, which it cannot do.<sup>41</sup> It maintains that other successful litigants have won licenses from the Commission, even after years, without being made "whole".<sup>42</sup>

That commenter fails to appreciate that QUALCOMM is not merely seeking a license: it is seeking a "reward" for its pioneering technology. That was the whole point of the pioneer's preference proceeding. Pioneers were to be rewarded for their innovations. The Commission was itself very candid about trying to incentivize pioneers to bring innovative technologies to the telecommunications market:

We are persuaded that a *significant reward* should be given to *induce* innovators to present their proposals to the Commission in a timely manner.<sup>43</sup>

This is not a matter of compensatory damages, or of making QUALCOMM whole. This proceeding is about rewarding QUALCOMM, as the other pioneers were rewarded. The original *Freeman* mandate was to remedy the "inconsistent treatment" accorded to QUALCOMM. For this reason, not only is award of Block D in EAG 3 not a "windfall," it is a requirement. In any event, award of a PCS license – over six years too late – is an insufficient reward to remedy the inconsistent treatment accorded QUALCOMM.

Furthermore, QUALCOMM is not as sanguine as the commenters and, apparently, the Commission, regarding the availability of the licenses presently entangled in bankruptcy litigation. We understand that courts in the Second, Third, Fifth and D.C. Circuit are all simultaneously engaged in FCC/bankruptcy issues and that not all of these

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<sup>41</sup> Datacom Comments, p. 4.

<sup>42</sup> *Id.*

<sup>43</sup> *Pioneer's Preference Order*, p. 3490 (emphasis added).


courts are in agreement. Moreover, we believe that, if the FCC were to award QUALCOMM one of the "reclaimed" licenses, that decision will be appealed with the same fervor that has characterized the bankruptcy proceedings. QUALCOMM is convinced that appropriate returned C Block licenses will not be available in the near future, free of litigation and threat of defeasement.


Thus because C Block licenses are no longer comparable to the spectrum QUALCOMM applied for in 1992, because they would be an insufficient reward, and because they will not be available free of legal encumbrances in the near future, QUALCOMM believes that only the 700 MHz spectrum satisfies the court's requirement that the Commission take prompt action to identify suitable spectrum and award QUALCOMM the license for it.

### III. CONCLUSION

None of the commenters has given sufficient reason to deny QUALCOMM's Petition for Declaratory Ruling, in view of the requirements of the mandate of the Court in *QUALCOMM v. FCC*. Therefore, the Commission should take prompt action to award QUALCOMM the license for Block D in EAG 3.

Respectfully submitted,

  
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Dated February 25, 2000

## **CERTIFICATE OF SERVICE**

I, Susanne M. Gyldenvand, hereby certify that on this 25<sup>th</sup> day of February 2000, I caused copies of the foregoing Reply of QUALCOMM Incorporated to be served on the parties listed below by first-class, postage-prepaid US mail, except to those marked with an asterisk (\*), which were served by hand:

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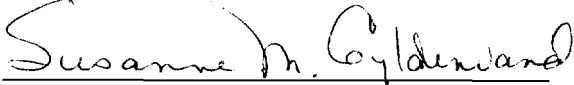
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